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18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

20
21 CHASOM BROWN, WILLIAM BYATT,
22 JEREMY DAVIS, CHRISTOPHER
23 CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situuated,

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC’S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF THE
APRIL 21, 2022 HEARING TRANSCRIPT**

24 Plaintiffs,

Referral: Hon. Susan van Keulen, USMJ

25 v.

26 GOOGLE LLC,
27 Defendant.

28 Case No. 4:20-cv-03664-YGR-SVK

GOOGLE LLC’S ADMINISTRATIVE MOTION TO SEAL
PORTIONS OF THE APRIL 21, 2022 HEARING TRANSCRIPT

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully
 3 seeks to seal the following portions of the April 21, 2022 Hearing Transcript (“Transcript”) related to
 4 Plaintiffs’ Request for Order For Google To Show Cause for Why It Should Not Be Sanctioned for
 5 Discovery Misconduct (“Plaintiffs’ Motion”), which contain Google’s confidential and proprietary
 6 information, including details related to Google’s internal projects, internal identifiers, data signals
 7 and logs, and their proprietary functionalities, as well as internal metrics. This information is highly
 8 confidential and should be protected. While the hearing was not originally sealed and the parties had
 9 agreed upon certain code words to use during the hearing, certain terms or phrases considered
 10 Confidential Business Information (“CBI”), including terms that the parties agreed to use code words
 11 for, were inadvertently revealed by both witnesses and counsel during the hearing on Plaintiffs’
 12 Motion. Plaintiffs’ Motion and supporting material have been filed under seal and Google’s Renewed
 13 Motion to Seal is currently pending before the Court at Dkt. No. 594.¹ The Court previously granted
 14 Google’s motions to seal the same or substantively similar information it seeks to seal now, including
 15 in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240, 276, 285, 286, 306, 320, 330, 341,
 16 350, 380, 420, 540, 571, 611.

17 This Administrative Motion pertains to the following information contained in the Transcript:

18 Documents Sought to Be 19 Sealed	20 Portions to be Filed Under Seal	21 Party Claiming 22 Confidentiality
23 Transcript for April 21, 24 2022 Proceedings	25 Portions Highlighted in Yellow at: 26 Pages 12:16, 18:14, 18:19, 89:20, 27 121:4, 121:7, 121:13, 128:8, 28 128:18-19, 128:22, 131:20-22, 29 131:25, 132:3, 132:6-7, 132:11, 30 132:15, 140:11, 140:14-15, 140:18,	31 Google

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 33 ¹ On May 31, 2022, Google filed a renewed administrative motion to seal (“Renewed Motion to
 34 Seal”) portions of the material associated with Plaintiffs’ Motion; specifically, the following motions
 35 to seal at: Dkt. Nos. 429, 510, 527, 529, 535, 548, 551, 582 (motions to seal); *see also* Dkt. Nos. 514,
 36 520, 550, 557 (declarations filed in support of motions to seal). Google had both pared back many of
 37 the proposed redactions from the original filings and removed a few exhibits from these sealing
 38 requests. The proposed redactions for the April 21, 2022 Transcript at issue are consistent with
 39 Google’s Renewed Motion to Seal at Dkt. 594.

1	155:20-21, 155:24-25, 169:12,	
2	169:20, 169:22, 189:6, 189:13,	
	190:10-12, 192:10	

II. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information”).

III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain medical information or “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99; *see also Turner v. United States*, 2019 WL 4732143, at *9 (finding good cause to seal “confidential medical information”). Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”) (citation omitted).

1 Here, the Transcript comprises confidential information regarding highly sensitive features of
 2 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 3 information provides details related to Google’s internal projects, internal identifiers, data signals and
 4 logs, and their proprietary functionalities, as well as internal metrics. Such information reveals
 5 Google’s internal strategies, system designs, and business practices for operating and maintaining
 6 many of its important services while complying with legal and privacy obligations.

7 Public disclosure of the above-listed information would harm Google’s competitive standing it
 8 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 9 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
 10 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
 11 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 12 sensitive business information related to Google’s processes and policies to ensure the integrity and
 13 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 14 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 15 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 16 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 17 motion to seal as to “internal research results that disclose statistical coding that is not publically
 18 available”).

19 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 20 compromise Google’s internal systems and data structures. Google would be placed at an increased
 21 risk of cybersecurity threats, and data related to its users could similarly be at risk. *See, e.g., In re*
 22 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
 23 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
 24 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
 25 threat is an additional reason for this Court to seal the identified information.

26 The information Google seeks to redact is the minimal amount of information needed to
 27 protect its internal systems and operations from being exposed to not only its competitors but also to
 28 nefarious actors who may improperly seek access to and disrupt these systems and operations. The

1 “good cause” rather than the “compelling reasons” standard should apply but under either standard,
2 Google’s sealing request is warranted.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Google respectfully requests that the Court seal the identified
5 portions of the Transcript.

6 DATED: June 27, 2022

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8 SULLIVAN, LLP

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